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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,441	05/31/2001	Steven J. Rychnovsky	17858/120103	8892

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05/09/2003

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EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

9

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/871,441

Applicant(s)
Steven J. Rychnovsky

Examiner
Ray Henley

Art Unit
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 20, 2003 and March 11, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 and 57-60 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 and 57-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1614

CLAIMS 1-55 AND 57-60 ARE PRESENTED FOR EXAMINATION

Applicant's Information Disclosure Statement filed February 20, 2003 and Amendment/Rule 131 Declaration filed March 11, 2003 have been received and entered into the application. Accordingly, the specification and claims have been amended as directed, claim 56 has been canceled and claims 58-60 have been added. Also, as reflected by the attached, completed copy of form PTO-1449, the cited references have been considered.

In light of the Rule 131 Declaration, the Examiner's reliance upon the Allison reference is withdrawn. Also, in light of applicant's arguments, the Examiner's reliance upon the Robinson et al. reference is also withdrawn.

Claim Rejection - 35 USC § 103

Claims 1-56 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamuraglia (WO 01/24825 A2), already of record, for the reasons of record as set forth in the previous Office action dated September 4, 2002, as applied to claims 1-57.

Applicant's arguments at page 13 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicant has argued that Lamuraglia teaches the use of 660 nm - 690 nm wavelengths while in the present invention, wavelengths in the 390 to 610 nm are utilized and thus the present invention is not taught or suggested by Lamuraglia.

Art Unit: 1614

However, the Examiner finds in both applicant's claims and the reference the term "about" which provides the Examiner a basis for maintaining the present rejection. In particular, no clear distinction can be seen by the Examiner between the lower range of Lamuraglia of "about 660 nm" (Lamuraglia at page 2, line 32) and applicant's claimed upper range of "about 610 nm".

Accordingly, for the above reasons, the claims are deemed to remain properly rejected and none of the claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Application/Control Number: 09/871,441

Page 4

Art Unit: 1614

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.

A handwritten signature in black ink, appearing to read 'Ray Henley, III', is positioned above the printed name.

RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1200

Henley; rjh
May 8, 2003